

space stations, and space stations for the reception of service from foreign countries.⁵³ Currently, no license is required in order to use a receive-only earth station to receive U.S.-originated signals over a U.S.-licensed FSS satellite. Voluntary registration of such earth stations is available for users who wish to be protected from harmful interference. In frequency bands shared with terrestrial services, receive-only earth station operators who wish to be protected from terrestrial interference must coordinate each earth station location in accordance with current domestic practice in the particular frequency band. A license is still required for use of a receive-only earth station to receive a foreign-originated signal, or any signal transmitted over a non-U.S. satellite.

76. The 1993 NPRM was initiated in response to a petition filed by Comsat to repeal the licensing requirement for receive-only earth stations operating with satellites of Intelsat. Since Comsat's petition was consistent with the Commission's ongoing effort to eliminate unnecessary regulation and speed processing, the Commission decided to treat the pleading as a petition for rulemaking and incorporated it into the 1993 proceeding.⁵⁴ The 1993 NPRM proposed to complete the deregulation of receive-only earth stations by eliminating the licensing requirement still in place for receipt of foreign-originating signals or use of non-U.S. satellites. In its place, the 1993 NPRM proposed a voluntary registration process which required applicants first to complete frequency coordination, then to submit a Form 493 and a certification that coordination had been completed.⁵⁵ If no objections were received, the station would be automatically authorized 30 days after the application had been placed on public notice as accepted for filing. If an objection was received within 30 days, the application would not be automatically granted and would be subjected to further public notices informing the public of its status.

77. We seek comment on whether, in light of the framework we propose in this Notice, the rules proposed in 1993 are still appropriate. At this time, we believe it would be more appropriate to continue to require a license for the use of receive-only earth stations to receive signals from non-U.S. FSS satellite systems, including Intelsat. As we have said, the absence of a U.S. space station license in these circumstances creates both technical and competitive concerns. Unless we license the earth stations that communicate with non-U.S. satellites, we will have no way to ensure that these radio communications, conducted within the United States, are consistent with U.S. policy concerning competition and spectrum management.

78. However, we propose to eliminate the licensing requirement for receive-only earth stations operating with U.S.-licensed FSS satellite systems for the reception of services from other countries. In this situation, our technical concerns will be taken into account when we license the space station. Moreover, since DISCO I authorizes U.S. satellites to provide both domestic and international service and we now propose to apply our ECO-Sat analysis when allowing non-U.S. satellite systems access to the U.S. market, we no longer find it necessary to base our regulatory treatment of receive-only earth stations operating with U.S. satellites on whether the communications

⁵³ See Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations, Notice of Proposed Rulemaking, 8 F.C.C. Rcd. 1720 (1993) ("1993 NPRM"); 47 C.F.R. § 25.131.

⁵⁴ 1993 NPRM, 8 F.C.C. Rcd. at 1720 ¶ 1.

⁵⁵ 1993 NPRM, 8 F.C.C. Rcd. at 1722-23 ¶ 15.

in question are international or domestic. For these reasons, we adhere to our 1993 proposal to create a voluntary registration process for this class of receive-only earth stations.⁵⁶

79. At present, receive-only earth stations may operate with the Intelsat K satellite⁵⁷ and receive Intelsat I services from Intelsat satellites without obtaining a license.⁵⁸ We ask for comment on whether to continue to exempt such receive-only earth stations from obtaining a license or to begin requiring that any new provision of such service be subject to the licensing process including an ECO-Sat analysis.

80. We recognize that requiring a license for each earth station in the United States presents a significant burden for some service providers. For example, receive-only DTH receivers might number in the millions. In an attempt to eliminate unnecessary regulation and speed processing, we propose to allow anyone wishing to operate a receive-only earth station with either a U.S. or non-U.S. satellite to request blanket authority to operate multiple technically identical receive-only earth stations in a particular service. Such a request might be made, for example, by a satellite operator, a user, an equipment manufacturer, or even an electronics retailer. A blanket request for authority will minimize the regulatory burden on applicants and expedite processing. Applicants would pay application fees associated with a blanket earth station license. We request comments on these proposals.

V. CONCLUSION

81. In this Notice, we tentatively conclude that the public interest requires that we adopt a uniform standard to determine whether a non-U.S. licensed satellite system should be permitted to enter the U.S. satellite services market. In proposing this standard, we wish to enhance effective competition in the global market for communications services while preventing anticompetitive conduct in the provision of satellite services and encouraging foreign governments to open their communications markets. We propose to open our market to non-U.S. satellite systems and foreign originating transmissions through the earth station application process if the competitive opportunities for U.S. satellites abroad are robust enough to prevent any distortion of competition in the U.S. market. The United States supports a competitive market based on private investment to achieve the most efficient delivery of satellite services to the public and advocates principles that will facilitate a more competitive environment for all satellite services. A global competitive satellite services market will provide U.S. customers with increased service options, improved quality, and lower rates.

82. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A. Written public

⁵⁶ See 47 C.F.R. § 25.131(b)-(i).

⁵⁷ Communications Satellite Corp. Request for Waiver of Section 25.131(j) of the Commission's Rules as it Applies to Services Provided via the Intelsat K Satellite, 7 F.C.C. Rcd. 6028 (1992) (granting waiver), application for review pending. The pending application for review will be addressed in the Report and Order in this proceeding.

⁵⁸ 47 C.F.R. § 25.131(j).

comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. § 601 et seq (1981).

83. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before July 15, 1996, and reply comments on or before August 16, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you should file five additional copies. Send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Federal Communications Commission, Reference Center, Room 239, 1919 M Street, N.W. Washington, D.C. 20554.

84. Written comments by the public on the proposed and/or modified information collections are due to Commission on or before July 15, 1996. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 - 17th Street, N.W., Washington, DC 20503 or via the Internet to fain_t@al.eop.gov. Written comments on the proposed and/or modified information collections must be submitted to the Office of Management and Budget (OMB) on or before 60 days after date of publication in the Federal Register.

85. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a). The Sunshine Agenda period is the period of time that commences with the release of public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically exempted. 47 C.F.R. § 1.1203.

86. In general, an *ex parte* presentation is any communication directed to the merits or outcome of the proceeding made to decision-making personnel that (1) if written, is not served on the parties to the proceeding, or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. 47 C.F.R. § 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted, two copies of the same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket

number of the particular proceeding and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. 47 C.F.R. § 1.1206(a)(1).

87. Any person who is making an oral *ex parte* presentation including data or arguments not already reflected in the person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) that summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation, 47 C.F.R. § 1.1206(a)(2).

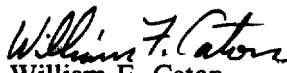
88. For further information concerning this rulemaking contact Paula Ford (202) 418-0760 or Virginia Marshall (202) 418-0778 of the International Bureau, Federal Communications Commission, Washington, D.C. 20554.

V. ORDERING CLAUSES

89. Accordingly, IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i), 303, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, and 308, NOTICE IS HEREBY GIVEN of our intent to adopt the policies and rules set forth in this Notice and that COMMENT IS SOUGHT on all the proposals in this Notice.

90. IT IS FURTHER ORDERED that the Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 et seq. (1981).

FEDERAL COMMUNICATIONS COMMISSION


William F. Caton
Acting Secretary

APPENDIX A

Initial Regulatory Flexibility Analysis

A. Reason for Action

In this proceeding the Commission seeks to solicit comments and develop a record on the proposed policies and rules to allow non-U.S. licensed satellite systems and satellite transmissions originating outside of the U.S. to enter the U.S. market and to continue licensing receive-only earth stations operating with non-U.S. satellite systems. These proposed rules are designed in large part to promote competition and enhance customer service and options throughout the U.S. and the world.

B. Objective

The Commission seeks to establish standard rules and procedures to regulate foreign entry into the U.S. satellite services market in order to promote competition, prevent anti-competitive conduct in the market for international communications services, and open foreign communications markets.

C. Legal Basis

The legal basis of this action is found in Sections 303 and 308(c) of the Communications Act of 1934, 47 U.S.C. §§ 303 and 308(c).

D. Reporting, Recordkeeping and Other Compliance Requirements

We propose to require that earth stations working in conjunction with non-U.S. satellite systems and foreign satellite service providers file certain information regarding the foreign service, markets, and satellite systems. This is not estimated to be a significant economic burden for these entities.

E. Federal Rules That Overlap, Duplicate or Conflict With These Rules

None.

F. Description, Potential Impact and Number of Small Facilities Affected

The proposed rules would apply to all earth stations or service providers (including small entities) that seek authorization under Part 25 of the Commission's rules to operate with a non-U.S. licensed satellite. These proposals are intended to ensure that U.S. satellite systems can compete effectively in international markets and that foreign markets are open. Copies of this Notice will be sent to the Chief Advocacy of the Small Business Administration.

G. Any Significant Alternative Minimizing Impact on Small Entities Consistent with Stated Objectives

The Notice solicits comment on other alternative to achieve the Commission's objectives.

APPENDIX B

Proposed Rule Amendments to 47 C.F.R. Part 25 of the Commission's Rules

Part 25 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) is proposed to be amended as follows:

1. The authority citation for Part 25 continues to read as follows:

Authority: Secs. 25.101 to 25.601 issued under Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 101-104, 76 Stat. 419-427; 47 U.S.C. 701-744; 47 U.S.C. 554.

PART 25-SATELLITE COMMUNICATIONS

2. The Table of Contents for Part 25 is amended to read as follows:

* * * * *

EARTH STATIONS

- 25.130 Filing requirements for transmitting earth stations.
 - 25.131 Filing requirements for receive-only earth stations.
 - 25.132 Verification of earth station antenna performance standards.
 - 25.133 Period of construction; certification of commencement of operation.
 - 25.134 Licensing Provisions of Very Small Aperture Terminal (VSAT) Networks.
 - 25.135 Licensing provisions for earth station networks in the non-voice, non-geostationary mobile-satellite service.
 - 25.136 Operating provisions for earth station networks in the 1.6/2.4 GHz mobile-satellite service.
 - 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.
- * * *

* * * * *

3. Section 25.113 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 25.113 Construction Permits

* * * * *

(b) Construction permits are not required for satellite earth stations that operate with U.S.-licensed or non-U.S.-licensed space stations. * * *

* * * * *

4. Section 25.115 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 25.115 Applications for earth station authorizations

* * * * *

(c) Large Networks of Small Antennas operating in the 12/14 GHz frequency bands with U.S.-licensed or non-U.S.-licensed satellites for domestic services. * * *

* * * * *

5. Section 25.130 is amended by revising the first sentence of paragraph (d) to read as follows:

25.130 Filing requirements for transmitting earth stations

* * * * *

(d) Transmissions of signals or programming to non-U.S.-licensed satellites, and to and/or from foreign points by means of U.S.-licensed fixed satellites may be subject to restrictions as a result of international agreements or treaties. * * *

* * * * *

6. Section 25.131 is amended by revising paragraphs (b) and (j) to read as follows:

§ 25.131 Filing requirements for receive-only earth stations.

* * * * *

(b) Except as provided in paragraph (j) of this section, receive-only earth stations in the fixed-satellite service that operate with U.S.-licensed satellites may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251-25.256.

* * * * *

(j) Receive-only earth stations operating with non-U.S.-licensed space stations shall file an FCC Form 493 requesting a license or modification to operate such station. Receive-only earth stations used to receive INTELNET I service from Intelsat space stations need not file for licenses. See Deregulation of Receive-Only Satellite Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86-214 (released May 19, 1986).

7. Section 25.137 is added to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S.-licensed space stations

- (a) Earth stations requesting authority to operate with a non-U.S.-licensed space station to participate in the U.S. satellite service market must attach an exhibit with their FCC Form 493 application with information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in (1) the country in which the non-U.S.-licensed space station is licensed; and (2) all countries in which communications with the U.S. earth station will originate or terminate. The applicant bears the burden of showing that there are no *de jure* or legal constraints that limit or prevent access of the U.S. satellite system in the relevant foreign markets. The exhibit required by this paragraph must also include a statement of why grant of the application is in the public interest.
- (b) Earth stations requesting authority to operate with a non-U.S.-licensed space station must attach to their FCC Form 493 an exhibit providing legal, financial, and technical information for the non-U.S.-licensed space station in accordance with Part 25 and Part 100 of this Chapter. If the non-U.S.-licensed space station is in orbit and operating, the applicant need not include the financial information.
- (c) A non-U.S.-licensed satellite system seeking to serve the United States can be considered contemporaneously with other U.S. satellite systems if it is (i) in orbit and operating; (ii) has a license from another administration; or (iii) has been submitted for coordination to the International Telecommunication Union and is pursuing a license in another administration.

APPENDIX C

Proposed Amendments to Form 493

Question 1

In what administration is the space station licensed _____ or pursuing a license _____?

If the space station is not licensed in the United States, attach as Exhibit ____, information demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in (a) the country in which the non-U.S.-licensed space station is licensed; and (b) all countries in which communications with the U.S. earth station will originate or terminate. Attach as Exhibit ____ legal, financial, and technical information for the non-U.S.-licensed space station in accordance with Part 25 and Part 100 of our rules, 47 C.F.R. Part 25 and 100.

Question 2

This filing is for an authorization to provide or use the following type(s) of service(s): Place an "X" in the "()" next to all that apply.

- () 1. Fixed Satellite
- () 2. Mobile Satellite
- () 3. Radiodetermination Satellite
- () 4. Earth Exploration
- () 5. Direct to Home
- () 6. Other (please specify) _____.

**Separate Statement
of
Commissioner James H. Quello**

Re: Amendment to the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States and Amendment of Section 25.131 of the Commission's Rules and Regulations to Eliminate the Licensing Requirements for Certain International Receive-Only Earth Stations and Communications Satellite Corporation Request for Waiver of Section 25.131(j)(1) of the Commission's Rules as it Applies to Services Provided via the INTELSAT K Satellite (IB Docket No. 96 - , CC Docket No. 93-23, RM-7931, File No. ISP-92-007).

This *Notice of Proposed Rule Making*, known as "DISCO II,"¹ is the logical outgrowth of two recent Commission decisions: (1) The "Foreign Carrier Entry Order,"² in which we promulgated the "ECO-test" for market entry and regulation of foreign-affiliated entities, and (2) "DISCO I,"³ in which we amended the regulatory policies governing domestic fixed satellites and separate satellite systems.

The policy goal of these three proceedings (the instant matter and its twin progenitors) is to ensure the competitiveness of U.S. communications markets for satellite delivered services by employing an explicit effect-on-competition analysis as part of our overall public interest analysis. Rather than looking to a single factor (*e.g.*, "reciprocity") when considering the entry of foreign-owned or -affiliated entities, we will weigh the *de facto* and *de jure* conditions in the foreign home markets. The United States has advanced this position consistently and forcefully in several international fora, including trade talks. It is particularly important to facilitate opening foreign markets in what is the largest growth area of the world economy -- communications services in this "Information Age".

Commentors will note that this item is long on questions and short on tentative conclusions. This is as it should be when we give notice of proposed rules in a complex subject area. We seek the affected industries' expertise in applying a competitive trade analysis to inherently global communications services. Let no one doubt, however, this Commission's resolve to continue to press for access to foreign markets for our domestic providers.

¹ 'DISCO' is the acronym for Domestic International Satellite Consolidation Order.

² *Market Entry and Regulation of Foreign-Affiliated Entities, Report and Order*, IB Docket No. 95-92, FCC 95-475 (rel. Nov. 30, 1995).

³ *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, Report and Order*, IB Docket No. 95-41, FCC 96-14 (rel. Jan. 22, 1996).

SEPARATE STATEMENT
OF
COMMISSIONER SUSAN NESS

Re: Policies for Non-U.S.-Licensed Satellite Systems

The growth in satellite systems has been phenomenal. Satellites promise to provide us with an ever-expanding array of services and capabilities, offered on a global basis. We are truly becoming a global community.

The active involvement at the World Radio Conference last October by some 140 countries in the allocation of spectrum for satellites was clear testament to the worldwide expectation that satellites will be the "Information Skyway" for the world. To make that expectation a reality, satellite markets -- everywhere -- must be open. This has been, and will be, the Commission's message in international satellite fora and there should be no doubt that this is the message of the Notice we adopt today.

The pressing need for market access for satellite systems underscores the critical need for our Notice. Our multilateral discussions on this issue are ongoing and, in the end, promise the best global resolution of the market access issue. Our Notice sends the clear signal that, in the interim, we will open the U.S. satellite market to systems licensed in other countries so long as U.S. systems enjoy the same access in foreign markets.

Market access is the key to the successful deployment of satellite systems and the innovative services they promise. The time is right to address this issue.